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HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 1002nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 July 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Submission of reports by States parties under article 40 of the Covenant (continued)

Organizational and other matters (continued)

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GE.90-16833/8070A

The meeting was called to order at 10.55 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued)

General comment on article 23 of the Covenant (CCPR/C/39/CRP.2/Rev.1, text dated 20 July 1990)

1. The CHAIRMAN invited the members of the Committee to examine the new text in their own language in order to make any necessary drafting changes.

2. Mr. POCAR (Chairman-Rapporteur of the Working Group) said that, in the third line of the third subparagraph of paragraph 6 of the French version, the word "lieu" should be replaced by "lien".

3. Ms. CHANET requested that the word "standard" in paragraph 2 of the French text (as in "une définition standard") should be replaced by the word "uniforme" used in the text dated 9 July 1990.

4. Mr. MAVROMMATIS drew the Committee's attention to the second sentence of paragraph 2, reading: "However, ... under the legislation and practice of the State, ..."; the combination of the words "the legislation and practice" did not seem appropriate to the situation of the many countries where in some respects only de facto situations existed, without any legislation.

5. Furthermore, he had always considered that article 23, paragraph 2 of the Covenant, which was dealt with in paragraph 4 of the document under consideration, established the right to conclude either a civil or a religious marriage. However, the issue did not seem to be dealt with in the document.

6. Mrs. HIGGINS, replying to Mr. Mavrommatis' first objection, said that the Committee had always requested information from States parties on both legislation and practice. The expression "legislation and practice" was, in her view, entirely appropriate.

7. As far as the second objection was concerned, she pointed out that the situation envisaged by Mr. Mavrommatis was covered by the following phrase in paragraph 4: "the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages".

8. Mr. MAVROMMATIS acknowledged that the right to a civil or religious marriage was indeed covered in the text under examination. However, he maintained the reservations expressed in his first objection.

9. Mr. PRADO VALLEJO said that "parental authority" should be rendered in Spanish as "patria potestad" (para. 6).

10. In the first sentence of paragraph 2, the appropriate adjective to describe the definition was "uniforme" rather than "normalizada".

11. Lastly, he did not understand the term "afirme" employed in paragraph 4 ("un matrimonio ... se celebre, afirme o registre ...".

12. Mr. POCAR (Chairman-Rapporteur) said that the word "afirme" should be replaced by "confirme", which should also be used in the French version.

13. Mr. NDIAYE said that, in the last sentence of paragraph 5 of the French text, the phrase "ou de même ordre" should read "ou du même ordre".

14. Mr. AGUILAR URBINA said he wished to make a number of drafting changes to the Spanish text. In the last sentence of paragraph 1, the expression "bastante información" should be replaced by "suficientes informaciones". In the first sentence of paragraph 2, "de región a región" should be replaced by "entre regiones". In the second sentence of the same paragraph, "subraya" should be replaced by "destaca", "consideran" by "consideren" and "ésta" by "éste". In the same paragraph, the adjective "extensa" (as in "familia extensa") should be replaced by "extendida" and, in the following sentence, the article "las" should be inserted in front of "familias". Finally, in the same sentence, "deberían" should be replaced by "deberán".

15. Mr. POCAR (Chairman-Rapporteur) noted, in respect of the verb "deberían", that the question raised the eternal problem of the use of the conditional ("should", for example) rather than the future ("shall") to express a duty.

16. Mr. MYULLERSON said he had a number of drafting changes to make to the Russian text and that he would submit them to the Secretariat.

17. Mr. WENNERGREN recalled that he had objected to the word "compulsory", in the second sentence of the English text of paragraph 5. He would prefer a wording closer to that of other articles of the Covenant and would like that term to be replaced by the expression "contrary to freedoms recognized in the Covenant".

18. Mr. POCAR replied that the idea that measures should not be contrary to the Covenant was already reflected in the same sentence ("should be compatible with the provisions of the Covenant"). Furthermore, the Committee was interpreting article 23 of the Covenant and was not required to adopt the precise wording of other articles.

19. The text of the general comment on article 23 of the Covenant (CCPR/C/39/CRP.2/Rev.1, dated 20 July 1990), as orally amended, was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

20. The CHAIRMAN said that the officers of the Committee had examined the issue of further work on general comments. It had been decided that Ms. Chanet would review and update the general comments on articles 7 and 10 of the Covenant. Mr. Dimitrijevic had accepted to deal with article 18. Mr. Myullerson could take responsibility for comments on article 25 while he himself (the Chairman) would address article 27 after the October session.

21. Mrs. HIGGINS endorsed the suggestions that had just been made. While all the articles mentioned were extremely important, she believed that, as a result of recent upheavals in the world, the drafting of a general comment on article 25 was particularly opportune. The Committee would also have a key role to play regarding the problem of minorities, which arose ever more frequently throughout the world. The other major international human rights

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instruments, such as the European Convention on Human Rights, to which the countries of Eastern Europe would perhaps accede shortly, contained no provision relating to minorities, and in that respect the Committee's work could be particularly significant. True, time was short, but it should be possible to draft, at least in preliminary form, some extremely short comments which would make States parties refrain from declaring, as they frequently did when they submitted their reports, that there was no need for them to describe the situation of minorities as all their citizens were equal.

22. The CHAIRMAN recognized the merits of the suggestion and said he would consider how it could be acted upon.

The meeting was suspended at 11.30 a.m. and resumed at 11.50 a.m.

23. The CHAIRMAN, endorsing a suggestion by the members of the Working Group on Communications present at the meeting, requested Mrs. Higgins to introduce the document prepared by the Working Group on the issue of follow-up (CCPR/C/WG/39/WP.1).

24. Mrs. HIGGINS said that the working paper was a response to the wishes expressed by the Committee at its previous session in New York; the Committee wanted to provide itself with the means to work more effectively and to ensure follow-up for the views which it formulated in respect of communications submitted to it under the Optional Protocol (q.v., art. 5, para. 4).

25. Paragraph 1 of the working paper proposed a change in the practice followed to date: when the Committee made a finding of a violation, the State party concerned would be asked, no longer in a note verbale, but in the views themselves, to inform the Committee of what action it had taken in relation to the case. She said that the notes verbales sent by the Committee frequently went unanswered and the new procedure should make it possible to remedy that situation. In addition, the Working Group had felt that it was necessary to set a time-limit for the receipt of such information. The time-limit should be flexible and take into account the specific circumstances of each case. If the measures to be taken by the State party involved releasing the author of the communication, then they could take effect immediately and the State could rapidly inform the Committee of its action; in contrast, in cases where the measures involved compensation or redress, the procedure would clearly take longer. In any event, the time-limit should not exceed 180 days.

26. Paragraph 2 of the paper was inspired by a more precise objective, namely to give wider publicity to the reactions of States parties to the views of the Committee. Under article 2, paragraph 3 of the Covenant, States parties undertook to ensure effective remedies for violations of the Covenant. If no reply was received within the indicated time period, or if the reply showed that no remedy had been provided, the fact would henceforth be noted in the Committee's annual report. Equally, positive responses and co-operation from States parties would also be noted in the annual report.

27. The Committee had amended its guidelines for the preparation of reports, and requested States parties who were also parties to the Optional Protocol, and in respect of which any finding of a violation had been made in the period under review, to include a brief section indicating "the measures they have adopted which give effect to the rights recognized" in the Covenant (art. 40)

in respect of the authors concerned. Because of the periodicity of reports under article 40, that information was additional to, and did not replace, the information that was to be given to the Committee under the time-limits specified under paragraph 1 of the working paper prepared by the Working Group.

28. Paragraph 4 of the working paper contained provisions designed to improve the dialogue between the Committee and States parties. It was proposed that, if the information mentioned in paragraph 3 of the paper had not been made available in the relevant periodic report, questions relating to it would be included by the Committee in the list of issues that it customarily prepared for a State party a few days prior to the examination of the report, and the matter would be pursued in the dialogue with the State party.

29. Lastly, under paragraph 5, the Committee would appoint a Special Rapporteur for the follow-up of cases. The Special Rapporteur would be given the following duties: (1) to recommend action upon all complaints henceforth received from individuals held, in the view of the Committee, to have been the victims of a violation, and who claimed that no effective remedy had been provided; (2) to communicate with States parties in respect of such complaints already received by the Committee; (3) to assist the Rapporteur of the Committee in preparing the relevant sections of the annual report; (4) to seek to provide information relating to the situation to date. To that end, the Special Rapporteur would shortly communicate with all States parties and victims in respect of whom findings of violations had been made, and ascertain what action, if any, had been taken on the complaints. The information, when gathered in, would also be made available in a future annual report; (5) to advise the Committee on the appropriate deadline for the receipt of information on remedial measures adopted by a State party; and (6) to submit to the Committee, at suitable intervals, recommendations on possible ways of rendering the follow-up procedure more effective.

30. The Working Group also suggested inserting after paragraph 7 of the guidelines regarding the form and contents of reports from States parties under article 40, paragraph 1 (b) of the Covenant (CCPR/C/20) a new paragraph which would read:

> "When a State party to the Covenant is also a party to the Optional Protocol, and if in the period under review in the report the Committee has issued views finding that the State party has violated provisions of the Covenant, the report should include a section explaining what action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated."

31. Mr. FODOR expressed the view that in paragraph 5, before listing the duties of the Special Rapporteur, it was necessary to indicate the duration of his mandate. He suggested that the example of the mandate of the Special Rapporteur on new communications should be followed and the mandate of the Special Rapporteur for the follow-up of cases should be set at one year.

32. Mr. POCAR said he was gratified by the high calibre of the document submitted by the Working Group, which would allow the Committee to improve its work. He first of all drew the attention of all members to the fact that the

guidelines regarding the form and contents of reports naturally applied not only to the initial report and to the "second periodic report", but to all the reports that States parties were required to submit. As far as the duration of the Special Rapporteur's mandate was concerned, he recalled that the decision on the mandate of the Special Rapporteur on new communications had not been a general one, and that the Committee had chosen a specific duration of one year, with the possibility of renewal. He believed that it would be preferable to decide on a case-by-case basis, and not to set a limit in the document to be adopted.

33. Mr. PRADO VALLEJO said that Mr. Fodor's suggestion to set the duration of the Special Rapporteur's mandate at one year was a wise one. Moreover, the name of the Special Rapporteur should not be stated, as it would not necessarily be the same person from one year to the next. With regard to paragraph 5 - which was clearly the key paragraph in the document - he was of the view that the most important and complex function of the Special Rapporteur was that mentioned under subparagraph (4). Accordingly, it was desirable to clarify the meaning of the word "situation", a term that was far too vague and might cover a whole range of circumstances. He also inquired how the Special Rapporteur would establish contact with States parties. Would he do it through personal contacts or by other means? Also, what was the situation regarding contacts with victims in respect of whom findings of violations had been made? The procedure for communicating with such victims could be extremely complex, and he would like to know what channels of communication the Special Rapporteur would adopt. Would the victims themselves have to come to Geneva, or would the Special Rapporteur go to see them? How would the Special Rapporteur verify the measures taken by the State party? If a State party did not communicate any information, how would it be possible to know what follow-up had been given to complaints? All those questions underscored why paragraph 5 (4) was a key element in defining the duties of the Special Rapporteur, and the Committee should devote special attention to it.

34. Mr. WENNERGREN considered that it would be preferable to begin paragraph 2 by mentioning the positive features of the relationship between the Committee and States Parties. Accordingly, he suggested that the second and third sentences of the paragraph should read: "Positive information and other affirmations from States parties with regard to action taken or to be taken will be included in the annual report. If no reply is received within the indicated time period or if the reply shows that no remedy has been provided, this will henceforth also be noted in the Committee's annual report".

35. With regard to subparagraph (4) of paragraph 5, in many respects he shared Mr. Prado Vallejo's concerns and thought that the subparagraph in question should be reformulated to take those observations into account. Lastly, for reasons of logic, he thought that the current subparagraph (3) of paragraph 5 should be moved and inserted after the current subparagraph (4), as the assistance that the Special Rapporteur would provide in preparing the relevant sections of the annual report would be based on the correspondence between the Committee, States parties and individual victims of violations as a whole, which was covered by subparagraphs (1), (2) and (4) of that paragraph.

36. The CHAIRMAN said he took it that the members of the Committee approved Mr. Wennergren's proposals and also agreed to delete the second sentence of

the introductory section of paragraph 5 on the understanding that the Committee remained free to appoint a Special Rapporteur not necessarily for a one-year period, but for such a period as it deemed necessary.

37. Mrs. HIGGINS stressed that paragraph 5, subparagraph (4) should clearly indicate that the information gathered by the Special Rapporteur would be presented in the Committee's annual report, as it was important for States parties to know that the Committee prepared a report on its work and that the document was published.

38. She suggested amending the first sentence of paragraph 5, subparagraph (4) to read: "To seek to provide information on any action relating to views adopted up to the present date". The beginning of the second sentence of the same subparagraph could also be amended to read: "To this end, the Special Rapporteur will communicate in writing with all States parties and, if he deems it appropriate, victims, etc.".

39. Mr. WENNERGREN endorsed Mrs. Higgins' suggestion and proposed adding to the end of the first sentence of paragraph 5 (4) the words: "when such information has not otherwise been made available", so as to clarify that the Special Rapporteur was not responsible for investigating situations about which the Committee was already fully informed.

40. The CHAIRMAN, taking up a suggestion made by Mr. Mavrommatis, suggested deleting the words "in writing" so as to allow the Special Rapporteur sufficient latitude to communicate with those concerned by other means such as telephone or telefax.

41. Mr. PRADO VALLEJO favoured the adoption of less restrictive wording for paragraph 5 (4) in order to indicate, for example, that the Special Rapporteur could take any measures he deemed necessary, in particular by contacting States parties and victims, so as to be able subsequently to report to the Committee on the situation. The Special Rapporteur would thus have sufficient leeway to perform his mandate.

42. The CHAIRMAN pointed out, in connection with paragraph 5 (1), that action upon all letters of complaint received was, of course, to be recommended to "the Committee". He added that a revised version of the guidelines would be published at the end of 1990 following the meeting of persons chairing the human rights treaty bodies and that any necessary drafting changes would be duly made to the final version in the various languages.

43. Mr. NDIAYE requested that the expression "in respect of whom findings of violations have been made" should be deleted from paragraph 5, subparagraph (4), as there could only be victims if violations had been committed. In addition, he suggested amending paragraph 5, subparagraph (2), to read: "To recommend to the Committee future action upon all complaints in respect of which the Committee has formulated views if the authors of those complaints consider that no effective remedy has been provided to them". He specified that those were merely drafting changes.

44. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the document submitted by the Working Group on Communications (CCPR/C/WG/39/WP.1), as orally amended.

45. It was so decided.

46. The CHAIRMAN asked whether the members of the Committee were in favour of appointing Mr. Fodor as Special Rapporteur for a period of one year.

47. Mr. PRADO VALLEJO nominated Mr. Fodor as Special Rapporteur.

48. The CHAIRMAN said that, if there was no objection, he would take it that Mr. Fodor was appointed as Special Rapporteur for the follow-up of cases before the Committee.

49. It was so decided.

The meeting rose at 1 p.m.

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Thirty-ninth session

SUMMARY RECORD OF THE 1003rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 July 1990, at 3 p.m.

Chairman: Mr. LALLAH

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Organizational and other matters (continued)

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GE.90-16843/2176B

The meeting was called to order at 3.35 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Membership of the Working Groups

1. The CHAIRMAN said that, following informal consultations, he would propose that the Working Group on Communications for the next session should consist of the following members: Mr. Ndiaye, Mr. Prado Vallejo, Mr. Myullerson, Mr. Wennergren, and possibly Mr. Dimitrijevic. The members of the Working Group under article 40 of the Covenant would be Ms. Chanet, Mr. Cooray, Mr. El-Shafei, and possibly Mr. Wako. Since a membership of at least five would be needed for decisions concerning admissibility of communications, members of the Working Group under article 40 would need to be prepared to transfer to the other Working Group as necessary. He took it that the Committee would authorize him, as in the past, to approach other members in the event that either group fell short of the right number.

2. It was so decided.

Working methods of the Committee

3. The CHAIRMAN said that in the course of the year a number of ideas had been put forward on how the Committee's working methods might be improved. More recently, an informal seminar had been held on the subject, which had been attended by many Committee members. He invited Mr. Pocar to outline the suggestions made in the course of that seminar.

4. Mr. POCAR said the seminar had been organized by the Norwegian Institute of Human Rights, and had extended over two days: about half the members of the Committee had taken part. The discussion had related only to consideration of the reports of States parties, and not to consideration of communications. The Institute had promised to send all members of the Committee a detailed report on the deliberations at a later stage, and he would suggest that discussion of the question might more conveniently be continued after that report had been received.

5. Among the ideas to emerge from the seminar was the suggestion that consideration of periodic reports should be more structured, and that questions put to Member States should be made more specific, and more directly related to the actual situation in the country concerned. It had also been suggested that the Working Group set up at one session could start immediately on its work for the next session. In that way, there would be time to make a more in-depth study of the reports concerned, and discussions within the Group would be more useful. That method would also facilitate the work of non-governmental organizations, which would be able to submit their observations to the Working Group well in advance.

6. The question of the periodicity of reports had also been touched on. While there had been general agreement that the current periodicity of five years should be retained, it had been suggested that the Committee should look into the possibility of having supplementary reports on specific questions, when warranted by special circumstances. Priority should of course

be given to emergency situations: in particular, it had been suggested that it might be useful for reports to be sent immediately an emergency situation developed. The position at present was not very satisfactory in that when an emergency arose, not only did the Committee not receive an up-to-date report, but the country concerned often asked for a postponement. Such a situation had occurred recently, when a country whose report had been scheduled for discussion at the current session had asked that consideration of its report should be deferred because of the emergency that had just arisen. Many countries also asked for postponement on the grounds that important legislative and constitutional changes were taking place: the report of one such country, which had asked for a postponement the previous year, was unlikely ever to be examined by the Committee at all. In that connection, he noted that one of the most useful dialogues the Committee had ever had was its recent one on the report of the Union of Soviet Socialist Republics: the fact that crucial changes had been taking place at that very moment had added greatly to the interest and value of the discussion.

7. Another question that had been discussed at some length at the seminar was how the Committee could improve its method of reporting so as better to comply with its obligations under article 40 (4) of the Covenant. One suggestion had been that the Chairman could make a brief summary of all the observations made on each report, which could then be transmitted to the State party concerned. Another suggestion had been that an individual Special Rapporteur should be assigned to make a detailed study of implementation of the Covenant in any country which had reached the stage of submitting a third periodic report.

8. The CHAIRMAN said it was clear that the present method of examining periodic reports was not entirely satisfactory in that representatives of States parties, once the discussion on their report had ended, were not able to take away with them any authoritative document emanating from the Committee which summarized the observations made and the conclusions reached. It was true that summary records were issued, but there were often delays in publication and distribution, and not all reporting States in fact made use of them.

9. He invited general comments on how the Committee's working methods might be improved.

10. Mr. MAVROMMATIS said there was a tendency to think that the recent very important changes that had taken place in a number of Eastern European countries meant that human rights problems would no longer arise. In fact, that was far from being the case. If the Committee was to retain its credibility, it should keep in mind the significance of the human rights situation in the developing countries, countries which accounted for no less than two thirds of the membership of the United Nations.

11. He foresaw some difficulties in attempting to make a brief summary of all the observations made on a particular report, since the Committee's time was limited. In fact, some headway had already been made, in that more meeting time was now devoted to each State party's report. However, he agreed that working methods could certainly be improved, and the whole matter should be given careful consideration.

12. Mr. WENNERGREN said he had on occasion observed that once delegations had introduced and defended their reports, and when the question-and-answer period was over, they took fewer notes, seemed to relax, and appeared less attentive to the general comments. It was, moreover, possible that when they returned to their countries, after a somewhat fatiguing dialogue, they would have few clear recollections of what had been said in those comments or of concerns which they had been specifically requested to communicate to their Governments. Since the summary records would arrive too late to remind them, what had to be determined was how the Committee's conclusions could be conveyed to the States parties with minimum delay.

13. He would suggest that since the meetings were open, that might be done by placing at their disposal, on a non-official, informal basis, tape recordings, in the languages of delivery, of the concluding part of the discussion of their reports, i.e. the general comments and summing-up.

14. The CHAIRMAN said he understood that recorded cassettes were already at the disposal of States parties, a number of which indeed availed themselves of that possibility.

15. Mrs. HIGGINS, said that, having been unavoidably absent from the informal seminar, she was keenly interested in Mr. Pocar's account of the suggestions which had emerged from it.

16. She was sympathetic to the view that it was useful for delegations to have a tangible expression of the Committee's conclusions to take home with them. But to provide such material in the form of specially prepared reports would - she believed - be an excessively time-consuming exercise, inasmuch as the Committee would no doubt wish to examine and endorse the contents. For that reason, she would welcome suggestions for practical alternatives, such as that advanced by Mr. Wennergren. Possibilities of accelerating the production of a written record of the final stage of the examination of the report and transmitting it to the State party concerned within, say, 10 days, might be one of the solutions investigated.

17. Concerning preparatory activities, she believed that the pre-sessional Working Group might, as soon as it was established, designate individual members to take the lead in drawing up lists of issues to be addressed to States parties; each would thus have ample time to study all the available information concerning the country for which he or she had been made responsible. That information need not, she added, come exclusively from non-governmental organizations; notwithstanding the undoubted value of those bodies' input, all available sources should be utilized to the full right up to the last minute.

18. Concerning derogations in time of public emergency, she concurred that it was currently most unsatisfactory that because of the manner in which article 4 of the Covenant was structured the Committee was only apprised of requests for postponement of consideration or submission of reports at a very late stage. It would be easier for the Committee to adjust its programme if, whenever a derogation was entered under the provisions of article 4, the State party concerned was requested to supply a brief written report on the situation.

19. Postponement of the consideration of reports was also sometimes requested on grounds of "major internal change". That, too, created problems, and all the more so because, at least in her view, it was at such times that dialogue could be most fruitful and the Committee's contributions most productive. Perhaps the guidelines might be supplemented or revised to elaborate on that point, and to indicate to States parties that major internal change was not necessarily to be considered a reason for postponement.

20. Lastly, and on a topic which had not yet been raised, she expressed the view that the methodology established by the Committee in regard to the consideration of third periodic reports should be modified to ensure that two major areas of concern were indeed brought into focus: firstly, questions that had been unsatisfactorily answered during consideration of the previous report; and, secondly, changes which had occurred since then. To that end, lists of issues should be drawn up containing carefully formulated questions which had a very direct bearing under one or other of those headings.

21. Mr. ANDO, remarking that he had not been able to participate in the informal seminar either, addressed the issue of "general comments", under article 40. It seemed to him that what the term was currently understood to mean did not correspond to what had been originally intended. To his mind, "general comments" signified a single synthesis of observations concerning the totality of the reports considered, in relation to clearly defined issues - for example, discrimination. That synthesis would be transmitted to all the States parties, to aid them in further improving implementation. In the absence of such a procedure, and if the present procedure, which he for his part found relatively satisfactory, were to be changed, short-term solutions must be explored in the first instance.

22. In that connection, the Chairman had suggested that some form of written commentary might be transmitted to a State party following consideration of its report. That would be useful, but responsibility would have to be assigned for drafting such a text, which would have to be endorsed by the Committee; as had already been stated, that would take considerable time and was hardly practicable. The communication of tape recordings could also be a solution, as could the communication of more rapidly produced summary records of the appropriate parts of the meetings; but it was important to bear in mind that no two members of the Committee drew exactly the same conclusions from a report or made exactly the same comments; such recordings or records would thus amount to no more than an enumeration of points made.

23. For the longer term, he was interested in the possibility of drafting a survey of the implementation of the Covenant by any given State party. Members of the Committee might be made responsible for preparing such surveys; they would be accorded time to assemble, on the basis of official or unofficial inquiries, the information required, perhaps in consultation with other members. In that way, it should not take too long to build up valuable profiles of implementation by States parties, summaries of which might in due course be made available to them.

24. Mr. NDIAYE said that, in his view, members of the Committee underestimated the impact of the dialogue concerning periodic reports; whatever their reactions to that exchange, Governments whose reports were under review were, as he knew from personal contacts in a number of countries, far more attentive to what was said than the Committee might suppose. As members would recall from an occasion in New York, the discomfort caused by cutting a poor figure through the submission of an unsatisfactory report had been strongly felt by one major country, whose human rights record, incidentally, posed few problems. Delegations consequently prepared their submissions with great care, even taking steps to determine the particular concerns of those who would be questioning them. Permanent Missions reported back directly to their Governments on the tenor of the meetings. Therefore, although there might always be room for improvement in its methods, the Committee could rest assured that the dialogue on periodic reports by no means went unheeded.

25. That being said, the annual report of the Committee to the General Assembly was obviously of greater significance. No State would wish to be given an unfavourable assessment by the Committee in such a widely circulated and cited document.

26. On the question of the Committee's methodology concerning general comments under article 40, he did not believe that within the limited time span of its sessions, the Committe could assume the task of drawing up additional reports: it already had a very heavy workload. For his part, he was inclined to support the idea that the Chairman should be entrusted with preparing a synthesis of general comments; adequate time should, however, be allowed for that purpose.

27. On the separate issue of the justification of derogations on grounds of public emergency, he believed that adequate safeguards were incorporated in article 4 (3) of the Covenant which placed the burden of justification on the State party concerned; additional assurances would, however, be available if States parties made the declaration for which provision was made in article 41. It was his view, however, that full discussion of the list of issues, together with the oral questioning which occurred during examination of second periodic reports and the backing of good documentation, provided members of the Committee with a satisfactory idea of the situation actually obtaining in the country under consideration.

28. Mr. COORAY said that at recent sessions the Committee had been developing a very useful practice whereby, at the end of the consideration of each report, members made general observations and the Chairman summarized the main points of the discussion. However, he was pessimistic about the prospects of preparing a written summary for presentation to the reporting State. The Committee would have to discuss and approve such a document, which would take a considerably time. He suggested instead making the general observations and Chairman's summaries available as quickly as possible to the States parties, which would thereby know the general feeling of the Committee with regard to their performance.

29. Ms. CHANET noted that, in the case of the Committee against Torture, a rapporteur was assigned to each country, and at the end of the consideration of that country's report, provided a final summary. However, the system had not yet proved its worth and its advantages and disadvantages could not be known. The main drawback which she foresaw was that there might be a tendency among Committee members to leave things to the rapporteur and not bother to ask many questions.

30. When considering third or fourth periodic reports, the Committee should keep rigorously to its rules; it should avoid repeating questions asked in connection with the previous report and concentrate on new points that had arisen since then. It was for the Secretariat and the Working Group to come up with as many new questions as possible. Members of the Committee should also show discipline and spend less time adding questions to those already selected by the Working Group, except when the Committee was considering the list of issues. The Committee should concentrate on important issues, unanswered questions and doubtful answers: that would produce a true dialogue between the State and the Committee members.

31. It was also necessary to correct the imbalance between the time reserved for questions and that reserved for general comments, which should be increased. One development over the past two years had been the summary which the Chairman gave at the end of the dialogue; he might be asked to go further in that direction and make a summary resembling what was in the annual report, namely his own views plus a résumé of the members' comments. She was not opposed to the idea of preparing a formal text, but the time for that was perhaps not ripe. Such a procedure would mean that all Committee members who had spoken would have to check that their thoughts had been adequately reflected.

32. She also drew attention to the fact that when the Chairman announced to the representatives of States parties that the time had come for concluding observations by Committee members, many representatives seemed surprised, having thought that the reporting procedure had come to an end. Delegations should be advised in advance that the procedure consisted of two stages of almost equal length: questions and answers on the report and general observations made by members of the Committee, to which the State representatives could respond if they so wished. A balance could easily be found if States were better informed of the importance which the Committee attached to the concluding observations.

33. The CHAIRMAN said that the Chairman's summary depended very much on who was in the Chair: if a more comprehensive statement by the Committee was really wanted, some other procedure had to be devised.

34. Mr. POCAR said that two goals were involved: one was to improve the dialogue with delegations and the other was to achieve more effective follow-up to that dialogue. The former would probably be easier to attain than the latter. He agreed with Mr. Ndiaye that the dialogue was already significant, but that did not mean it could not be improved.

35. He also agreed with Mrs. Higgins that the Committee should concentrate on unresolved matters from the previous report and on current issues in the country. In some cases the list of issues should be better drafted. However, the summary records showed that sometimes the list of issues was well formulated but the questions of Committee members were not. In debate, members of the Committee had repeated questions on a country's third periodic report that had been asked during consideration of the second period report and had received the same answers. Members should therefore try to exercise restraint, although they should not necessarily avoid adding further questions to the list of issues, which after all was drawn up by the Working Group and not by the Committee itself and was only adopted formally by the Committee after it had already been sent to the State party. However, the fact that, at the current session, the lists of issues for three countries had been approved in less than half an hour made it doubtful whether Committee members who were not on the Working Group could really consider the list of issues carefully.

36. He agreed that the question of general comments should be considered more carefully in order to come up with new ideas. For the moment, he thought that Ms. Chanet's approach was correct: the Committee could try to have more precise general observations at the end as well as a more detailed summing-up by the Chairman. That development was already in fact in progress. Members sometimes made very detailed general observations at the end of the consideration of a report, but sometimes they did not, and it was not easy for the relevant points to be summarized by the Rapporteur or the Chairman. It would be an improvement if members consistently made specific points concerning specific laws and practices.

37. Mr. AGUILAR URBINA agreed with Ms. Chanet that the members of the Committee should exercise self-discipline, especially in limiting the length of time they took to put questions. He also agreed with Mr. Pocar that the dialogue with States parties could be improved. The Working Group generally did a good job and prepared the list of issues conscientiously. However, as Mr. Pocar had said, the Committee often did not have the time to study that list.

38. When reviewing Mr. Alston's report (A/44/668) the Working Group had seen one possibility of avoiding the repetition of questions orally by members of the Committee: when the Committee members received the reports of States parties at home they could send in their questions to the Working Group in advance, enabling the Group to draw up a more exhaustive list. Another method, given that it was known in advance which reports were to be considered at the next session and who the members of the Working Group were, was for one member of the Working Group to be assigned to each country report, so that the list of issues would not be prepared only the week before.

39. He agreed with Mrs. Higgins and Ms. Chanet that the Committee should concentrate on unanswered questions as well as on current developments in the State party concerned, and that the same questions should not be asked on the third periodic report as on the initial and second periodic reports other than in exceptional circumstances. The question of preparing a wind-up report on the dialogue with the State party's representatives could be left to a later session.

40. Mr. MYULLERSON said he thought that several proposals could be implemented either during the current session or at the next session. State party reports selected for consideration at the next session could be divided up between members of the Working Group so that each member of the Group was a Rapporteur on one particular report. Other Committee members could prepare their own suggested lists of issues for discussion at the next meeting of the Working Group. Everyone agreed that, at the time of presentation of second or third periodic reports, the Committee should repeat only those earlier questions which had remained unanswered and concentrate on new issues which had arisen in the interval between reports. The Committee could provide the delegation of the State party with a short tape-recorded summary of its final observations as soon as possible. Finally, with regard to emergency situations, he knew that the Secretariat had information about States parties currently so affected. At its next session, the Committee should consider asking such States for reports relating only to article 4 of the Covenant. In that way, the practice would be established.

41. Mr. WENNERGREN, referring to the proposal that a survey should be made of the implementation of the Covenant by any given State party, wondered whether the idea might not be expanded into a general survey of the implementation of the Covenant, evaluating the experience which the Committee had gained during its 20 years of existence. The survey might concentrate on particular issues such as preventive detention, emergency situations and freedom of expression and it might also usefully indicate difficulties experienced in implementation of the Covenant and the weak points of the instrument. The survey could be included in the Committee's annual report in the summer of 1991.

42. The CHAIRMAN, referring to the question of appointing Special Rapporteurs from among the members of the Working Group to carry out an in-depth study on a particular country, using material from the Secretariat, including its analytical study, said there were practical difficulties involved in introducing the system immediately. It was not sure that the Secretariat could produce the analytical study until such time as it was given additional resources. In any event, it would be a good idea to include a contribution to the Secretariat's input by the member of the Working Group concerned, but another problem was that there were more reports to consider at each session than there were members of the Working Group, some of whom, moreover, had additional tasks. The proposal could be implemented on a voluntary basis and non-governmental organizations preparing material could be requested to send it to the appropriate member of the Working Group so that he could make suggestions for the list of issues to be prepared in connection with the report of the State party concerned. The Group might look further into the matter.

43. One suggestion which could be put into effect immediately concerned the drafting of lists of issues for third periodic reports. The Working Group should refer to the decision taken by the Committee on 29 March 1989 to the effect that, while lists should not necessarily be dissimilar to those used for second periodic reports, they should be brought up to date, so that time was not wasted on questions which had already been covered. He would ask Mrs. Higgins to give the secretariat her suggestions on the matter.

44. A longer-term issue was the linkage of periodicity of reporting with the solution adopted after the consideration of third periodic reports in regard to analsyis of performance by States. That issue needed much more discussion.

45. The Working Group on Communications could also investigate some other proposals. In view of the appointment of a Special Rapporteur on follow-up, the Working Group might consider appropriate action on the issue of remedies, particularly under article 9 (5).

46. Mrs. HIGGINS said that that issue was somewhat broader. When dealing with remedies, sometimes, when the case related to article 9 (Liberty and security of person), the Committee called for compensation under article 9 (5). Sometimes, when the issue was different, the Committee, by reference to the general requirement that the State should grant a remedy, called for compensation under article 2. The legal point was whether the same conclusions followed in terms of compliance by the State party and particularly whether the aggrieved party was in the same position when seeking compensation under one or the other article. For example, did one article require him to apply through the national courts whereas the other did not? It would be helpful for the Working Group to consider the matter.

47. The CHAIRMAN suggested that the next Working Group on Communications should look into the question of remedies involving articles 2, 3 or 9 (5) of the Covenant.

48. It was so decided.

49. The CHAIRMAN further suggested that the Working Group under article 40 should look into the question of appointing Special Rapporteurs for individual State party reports due to be considered; should take stock of emergency cases and make appropriate recommendations; should examine the longer-term work of the Committee after the consideration of third periodic reports, with reference to periodicity of reporting; and, finally, should consider other issues which might arise.

50. It was so decided.

The meeting rose at 5.40 p.m.